

(5)  
No. 84-261

Office - Supreme Court, U.S.  
**FILED**

**DEC 13 1984**

**ALEXANDER L. STEVAS.**  
CLERK

**In the Supreme Court of the United States**

OCTOBER TERM, 1984

COMMODITY FUTURES TRADING COMMISSION,  
PETITIONER

v.

GARY WEINTRAUB, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES  
COURT OF APPEALS FOR THE SEVENTH CIRCUIT

**JOINT APPENDIX**

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**PETITION FOR WRIT OF CERTIORARI FILED  
AUGUST 16, 1984  
CERTIORARI GRANTED OCTOBER 29, 1984**

58 pp  
foldout

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U.S. Court of Appeals  
Seventh Circuit — Docket

82-2420

AIMS

Misc. No. \_\_\_\_\_

General No. \_\_\_\_\_

☐ Pvt. Civil☒ U.S. Civil

Related Nos. \_\_\_\_\_

☐ Admin. Review☐ Admin. Enforcement☐ Tax Court☐ Orig. Petition☐ Bankruptcy☐ CriminalDistrict N. Ill., E. DivFiled in D.C. 12-15-81Number 81 C 6996Notice of Appeal 09-03-82Judge Nicholas J. Bua1-850Federal Prisoner ☐State Prisoner ☐

Type Petition \_\_\_\_\_

Title: \_\_\_\_\_

COMMODITY FUTURES TRADING COMMISSION,  
Petitioner-Appellee

vs.

GARY WEINTRAUB,  
Respondent

AND

FRANK H. MCGHEE and ANDREW MCGHEE,  
Intervening Respondents-Appellants

## Summary Of Events

Docketed: 09-13-82

Briets Distributed \_\_\_\_\_

Docket Fee Paid: \_\_\_\_\_

YESin Forma Pauperis ☐

Appendix: \_\_\_\_\_

Date of Oral Arg: 4-8-83Appellant's Brief: 10/25/82Panel: PELL, COFFEY, WEIGEL

Appellant's Brief: \_\_\_\_\_

Opinion Date: 11-21-83 - WeigelAppellee's Brief: 12/27/82 (APP)Disposition: REVERSED. On 3-19-84: REIS.

Appellee's Brief: \_\_\_\_\_

Disposition: REVISED OPINION with CERTAIN AMEN-Reply Brief: 12/27/82MENTS. 1-27-84 dist.

Intervenor's Brief: \_\_\_\_\_

Petition For Rehearing: 1-6-84 dist.Amicus Curiae Brief: 2-13-84Granted ☐ Denied ☒ 1-23-84 ans. 2-1-84Additional Authority: 12/27/82 4-22-83 dist.Mandate Issued: 4-26-84 Bill of Costs: \_\_\_\_\_4/25/83 dist. 7-6-83 dist.Record Returned: 4-26-84 part.Notice of Oral Arg: 3-14-83

Date Reinstated: \_\_\_\_\_

Reported At: 722 F2d 338

MAR 23 1983

Short Record Filed 09-13-82

Original Record Filed 9-22-82

Pleadings: 1 volumes.

Transcripts: \_\_\_\_\_ volumes.

Depositions: \_\_\_\_\_ volumes.

Exhibits: 1 env. IN CAMERA

Other: \_\_\_\_\_

## Supplemental Records

Content:

Date

## Record Withdrawal

Date By Whom Returned

|                                      |              |          |              |          |
|--------------------------------------|--------------|----------|--------------|----------|
| 1 v. pldg.                           | 236-3600     | 10-15-82 | JWStephenson | 10/26/82 |
| 1 v. pldg.                           | 202-254-9880 | 11-24-82 | H. Bledman   |          |
| 1 v. pldg.                           | FTS 254-9880 | 12-1-82  | Blechnan     | 12/20/82 |
| 1 v. pldgs                           | 236-3600     | 12-27-82 | Stephenson   | 12/27/82 |
| 1 pldg. pldg. env. IN CAMERA, 1 tape |              | 4-11-83  | LC           | 9-20-83  |
|                                      | 202-254-9880 | 12-8-83  | Blechnan     | 1-6-84   |





UNITED STATES COURT OF APPEALS  
SEVENTH CIRCUIT—DOCKET

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82-2420

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| Date  | FILINGS-PROCEEDINGS   |
|-------|---|
| <hr/> |   |
| 1982  |   |
| 9-17  | ORDER: On or before 9-27-82, intervening respondents-appellants to file a statement explaining why this appeal should not be dismissed as moot. (See order for details) |
| 9-24  | Filed intervening respondents/appellants' motion for stay pending appeal.   |
| 9-27  | ORDER: Notice to Respond to appellee to respond on or before 10-1 on appellants' motion for stay.   |
| 10-1  | ORDER: GRANTED appellee's motion for extension and time for filing response to intervening appellants' motion for stay is extended to incl. Tues. 10-5-82.              |
| 10-1  | Filed appellee's motion for extension of time to file response to intervening appellant's motion for stay pending appeal.   |
| 10-5  | Filed memo of appellee in opposition to intervening appellants' motion for stay pending appeal.   |
| 10-15 | Filed intervening respondents/appellants' motion for leave to file reply, instant.  |
| 10-15 | Filed intervening respondents/appellants' motion for leave to file reply, instant.  |
| 10-18 | DENIED McGhees' motion for stay pending appeal.   |
| 10-26 | Filed intervening respondents/appellants' motion for reconsideration of denial of stay pending appeal and for expedited appeal.   |
| 10-25 | Filed 15c intervening respondents/appellants' brief.  |

| Date        | FILINGS-PROCEEDINGS   |
|-------------|---|
| 11-4        | ORDER: Motion for leave to file reply is GRANTED and this court has considered reply-motion for stay pending appeal. This court has reconsidered its order of 10-18-82. Because intervening respondent appellants have raised no new arguments that would necessitate this court's modifying its original order, "motion for reconsideration of denial of stay pending appeal and for expedited appeal" is DENIED. Standard briefing schedule to apply. |
| 11-18       | Filed appellee's motion for extension of time within which to file brief of the commodity futures trading commission.   |
| 11-30       | ORDER: GRANTED appellee's motion and time for filing brief is extended to & incl. 12-10-82. Further ordered that the reply brief, if any, due on or before 12-27-82.  |
| 12-20       | Filed appellee's motion for leave to file brief of Commodity Futures Trading Commission Instantan. 15c tendered.  |
| 12-27       | Filed 15c appellee's brief, per order.  |
| 12-27       | Filed 15c appellant's reply brief.  |
| 12-27       | Filed appellees citation of additional Authority. 0&6c  |
| 12-27       | ORDER: appellee's motion of 12/20 GRANTED, clk has filed instantan 15c appellee's brief. appellants reply brief due 1/10/83.  |
| <i>1983</i> |   |
| 3-14        | ORDER: Notice of Oral Argument set oral argument on Fri. 4-8-83 at 9:30 AM. Further ordered that oral argument be limited to 20 min. side.  |
| 4-8         | Heard & taken under advisement.   |
| 4-22        | Filed appellee's cit. of addl. auth. per CR 11, dist.   |
| 4-25        | Filed appellant's additional authority, dist.   |
| v7-6        | Filed cit. of addl. auth. per CR 11 from intervenor, dist.  |

| Date        | FILINGS-PROCEEDINGS   |
|-------------|---|
| v11-21      | Filed Opinion by J. Weigel, REVERSED.   |
| v11-21      | ORDER: Final judgment, REVERSED, with costs.  |
| v12-2       | Filed appellee's motion for extension of time to file petition for rehearing  |
| v12-15      | ORDER: GRANTED appellee's motion. Appellee's petition for rehearing due before 1-6-84.  |
| <i>1984</i> |   |
| v1-5        | Filed motion of Securities Investor Protection Corp. for leave to file amicus curiae.   |
| v1-6        | Filed appellee's motion for leave to suppl. the record.   |
| v1-6        | Filed appellee's pet. for rehearing & en banc, dist.  |
| v1-6        | ORDER: DENIED counsel for Securities Investor Protection Corp.'s motion file brief as amicus curiae.  |
| v1-6        | filed SEC's (amicus curiae) statement urging that this court grant the petition of the CFTC's for rehearing & en banc.  |
| v1-6        | Filed Trustee's (Notz) motion for leave to intervene and file a petition brief in support of rehearing en banc, or, in the alternative, for leave a brief in support of rehearing en banc as amicus curiae. |
| v1-6        | Filed motion of U.S. Trustee (DeWitt) for leave to file a brief amicus curiae in support of petition for rehearing.   |
| v1-9        | Filed notice to respondent to file ans. to petition for rehearing & en banc ans. not to exceed 15 pages & bound in same color cover as brief, 25c required and due 1-23-84.                                 |
| v1-23       | Filed 25c intervening appellants' answer to pet. for rehearing, dist. en banc   |
| v1-23       | Filed intervening appellant's provisional motion for leave to suppl. the record   |



| Date  | FILINGS-PROCEEDINGS   |
|-------|---|
| v1-27 | Filed per order 25c amicus curiae's (U.S. Trustee) brief in support of Commission's pet. for rehearing and en banc, dist.   |
| v1-27 | ORDER: Appellee's and intervenor's motions to suppl. the record remain under advisement. DENIED trustee's motion to intervene but GRANT permission to file a brief as amicus curiae within 10 days of this order. This court will do nothing at this time involving SEC statement re CFTC pet. for rehearing and further ordered that U.S. Trustee's motion to file brief amicus curiae be GRANTED and clerk to file instant the 25 tendered copies of US Trustee brief as amicus curiae. |
| v1-31 | ORDER: GRANTED CFTC's & intervenors' motions to suppl. the record.  |
| v2-1  | Filed Trustee's (Notz) motion for extension of time.  |
| v2-6  | ORDER: GRANTED Trustee's counsel motion and Trustee for CDCB is granted to & incl 2-13-84 to file brief in support of rehearing en banc as amicus curiae.   |
| v2-13 | Filed 25c trustee's brief as amicus curiae for rehearing & en banc, 25c appdx., dist.   |
| v3-8  | Received notice from CFTC of withdrawal of former Gen. Counsel Dutterer & appearance of Dep. Gen. Counsel Adams.  |
| v3-14 | Filed USA's motion for leave to file a brief amicus curiae in support of pet. for rehearing, 15c brief tendered.  |
| v3-19 | ORDER: Court withdraws its opinion of 11-21-84. Court now reissues its revised & amended Opinion in this case, being in the form & words of opinion of 11-21-83 with exception of certain amendments set forth in the attached exhibit. The CFTC having filed its pet. for rehearing & en banc, any revisions or amendments to said   |

| Date  | FILINGS-PROCEEDINGS   |
|-------|---|
|       | petition or amicus briefs to be filed within 14 days of the date of this order, and upon failure to file any amendments or revisions, it will be assumed that petition and amicus briefs are re-directed to opinion of this court as presently revised. A response to suggestion for rehearing en banc having been called for, the intervenor-appellees shall have 10 days to respond to any revisions or amendments to the petition rehearing or amicus brief. |
| v3-20 | ORDER: DENIED USA's motion for leave to file a brief amicus curiae (Reasons in detail on orig. order)   |
| v3-30 | Filed 25c CFTC's amended pet. for rehearing & en banc, dist.  |
| v4-2  | Filed 25c SEC's judicial notice, dist. en banc.   |
| v4-13 | Filed McGhees' motion for leave to file instanter suppl. response intervenors-appellants to amended petition for rehearing en banc, 25c response tendered.  |
| v4-18 | ORDER: DENIED petition for rehearing.   |
| v4-26 | Mandate issued, partial record returned.  |
| v4-26 | Filed receipt for dist. ct. for mandate & part. record.   |
| v4-30 | ORDER: DENIED interv. appellants' motion to file instanter suppl. response.   |
| v8-24 | Filed notice from Supreme Ct. of US of filing pet. for cert., their #84-261.  |



## DOCKET ENTRIES, NO. 81-C-6996 (N.D. ILL.)

- 12-16-81 1 Filed 12-15-81 Application for order to show cause
- 12-16-81 2 Filed 12-15-81 Civil Cover Sheet
- 12-16-81 3 Filed 12-15-81 Notice of filing
- 1-20-82 4 Filed 1-19-82: Plaintiff's Notice of Filing; Application for Entry of a Protective Order.
- 1-20-82 5 Filed 1-19-82: Plaintiff's Notice of Filing.
- 1-20-82 6 Filed 1-19-82: Plaintiff's Applicant's Memorandum of Points and Authorities in Support of Application for an Order to Compel Answers to Deposition Questions.
- 1-20-82 7 Filed 1-19-82: Plaintiff's Notice of Filing.
- 1-20-82 8 Filed 1-19-82: Plaintiff's Exhibits to Application for an Order to Show Cause and Order to Compel Answers to Questions. (Vault)
- 1-20-82 9 Enter order dated 1-19-82: C.F.T.C. is granted leave to file, instant, its exhibits under protective Order. Access to these exhibits shall be limited to respondent, Gary Weintraub, and his counsel, Robert A.W. Boraks. (Draft)—BUA, J.  
Mailed notices 1-20-82.
- 1-27-82 10 Filed 1-26-82: Notice of Filing; Plaintiff's (unsigned) Agreed Order.
- 1-27-82 11 Enter order dated 1-26-82: Respondent is to file answer to C.F.T.C.'s application for an order to show cause and to compel by February 19, 1982, and C.F.T.C. to reply by February 26, 1982. Court will advise the parties if it requires oral argument. —BUA, J. wp  
Mailed notices 1-27-82.
- 3-5-82 12 Filed 2-26-82 respondent's notice of filing.
- 3-5-82 13 Filed 2-26-82 respondent's memorandum in opposition to the application for an order to compel answers to deposition questions. am
- 3-16-82 14 Filed 3-12-82: Applicant's Notice of Filing.
- 3-16-82 15 Filed 3-12-82: Applicant's Errata to Applicant's Memorandum of Points and Authorities in Support of Application for an Order to Compel Answers to Deposition Questions filed January 19, 1982.

- 3-16-82 16 Filed 3-12-82: Reply of the Commodity Futures Trading Commission to Respondent's Memorandum in Opposition to the Application for an Order to Compel Answers to Deposition Questions. wp
- 3-19-82 17 Filed 3-19-82: Applicant's Notice of Filing.
- 3-19-82 18 Filed 3-19-82;; supplemental Submission to the Reply of the Commodity Futures Trading Commission.
- 3-19-82 19 Filed 3-19-82: Respondent's Notice of Motion.
- 3-19-82 20 Filed 3-19-82: Respondent's Motion for Oral Argument on Application to Compel.
- 3-19-82 21 Enter order dated 3-19-82: Respondent's motion for oral argument on application to compel will be referred to a Magistrate.—BUA, J. wp Mailed notices 3-22-82.
- 3-24-82 22 (a) Enter order dated 3-18-82: The above-captioned cause is currently pending on my calendar. I recommend to the Executive Committee that this case be referred to a Magistrate of this Court. The reasons for my recommendation are: Hear and enter orders on discovery motions; application to compel answers to deposition questions.—BUA, J.  
(b) Enter order dated 3-19-82: It is hereby ordered that the above-captioned case be referred by lot to a Magistrate of the Court in accordance with the Rules.—McMILLEN, Acting Chief Judge for the EXECUTIVE COMMITTEE.  
REFERRED TO MAGISTRATE SUSSMAN.  
Mailed notices 3-24-82.
- 3-25-82 23 Enter order dated 3-24-82: This matter is set for status hearing April 22, 1982, at 9:30 a.m. on applicant's application to compel answers to deposition questions.—SUSSMAN, M. wp  
Mailed notices 3-25-82.
- 4-23-82 24 Enter order dated 4-22-82: Oral argument held. Counsel directed to submit a draft order pursuant to Magistrate's ruling on the applicant application for an order to compel answers to deposition questions.—Mailed notices 4-23-82. SUSSMAN, M. wp

- 4-27-82 25 Enter order dated 4-26-82: It Is Ordered application of applicant's to compel answers to deposition questions granted. (Draft)—SUSSMAN, M. Mailed notices 4-26-82. wp
- 5-12-82 26 Filed 5-6-82: Respondent's Notice of Filing.
- 5-12-82 27 Filed 5-6-82: Respondent's Objection to Magistrate's Order. wp
- 5-26-82 28 Filed 5/25/82 Notice of Motion by plaintiff.
- 5-26-82 29 Filed 5/25/82 Motion for Ruling on Objection to Magistrate's Order Pursuant to Local Rule 13(d).
- 5-26-82 30 Enter order dated 5/25/82: Respondent to file reply in support of objections to Magistrate's order by June 1, 1982, and to submit copy of transcript of oral argument had before the Magistrate.—BUA, J.  
Mld. notices 5/26/82. ALP
- 5-27-82 31 Filed 5-19-82 Commodity Futures Trading Commission's notice of filing.
- 5-27-82 32 Filed 5-19-82 response of the Commodity Futures Trading Commission to objection to Magistrate's order filed by Gary A. Weintraub. am
- 6-4-82 33 Filed 6-1-82 respondent's notice of filing.
- 6-4-82 34 Filed 6-1-82 respondent's memorandum in support of objection to magistrate's order.
- 6-15-82 35 Filed 6-8-82 notice of filing
- 6-15-82 36 Filed 6-8-82 Response of CFTC to Respondent's memorandum in support of his objections to the Magistrate's Order dk
- 6-16-82 37 Enter order dated 6-9-82: Ordered that respondent, Gary Weintraub, appear before representatives of the Commodity Futures Trading Commission and fully respond to the questions which are the subject of the Commission's Application without asserting an attorney-client privilege—BUA, J.  
Mld notices 6-16-82 dk
- 6-16-82 38 Filed 6-9-82 Appendix to CFTC's response to respondent's memorandum in support of his objections to the Magistrate's Order. dk
- 7-2-82 39 Filed 6-30-82 respondent's notice of motion.
- 7-2-82 40 Filed 6-30-82 respondent's motion to reconsider and to vacate or to clarify.

- 7-2-82 41 Filed 6-30-82 Intervenor's notice of motion.
- 7-2-82 42 Filed 6-30-82 intervenors' motion to intervene. am
- 7-2-82 43 Filed 6-30-82 intervenors' motion to vacate or modify.
- 7-2-82 44 Enter order dated 6-30-82: Frank H. McGhee and Andrew McGhee given leave to intervene. Applicant, C.F.T.C., to file answer to motions to vacate or modify order of June 9, 1982 by July 12, 1982, and respondents to reply by July 19, 1982.—Bua, J Mailed notices 7-2-82 am
- 7-14-82 45 Filed 7/12/82; Notice of applicant's filing
- 7-14-82 46 Filed 7/12/82: Joint response of the CFTC to Gary Weintraub's motion to reconsider and to vacate or to clarify and to the McGhee's motion to vacate or modify AC
- 7-19-82 47 Enter order dated 7/15/82: On the court's motion, this matter is set for status hearing August 20, 1982 at 9:30 a.m. Counsel for all parties are required to attend—SUSSMAN, M AC Mld notice 7/19/82
- 7-20-82 48 Filed 7/19/82: Notice of intervenors filing
- 7/20/82 49 Filed 7/19/82: Intervenor's reply motion to vacate or modify order of June 9, 1982 AC
- 7/29/82 50 Enter order dated 7/27/82: The court clarifies its order of June 9, 1982 to provide that respondent shall respond to the specific questions at issue without asserting an attorney-client privilege on behalf of Chicago Discount Commodity Brokers Inc—BUA, J AC Mld notice 7/29/82
- 8/24/82 51 Enter order dated 8/20/82: Status hearing reset to 8-24-82 at 9:30 a.m.—SUSSMAN, M. Mld notices 8/24/82 REW
- 8-26-82 52 Enter order dated 8/24/82: Status hearing held. Status hearing continued to 9-22-82 at 9:30 a.m.—SUSSMAN, M. Mld notices 8/26/82 REW
- 9-2-82 53 Filed 9/2/82 Notice of filing
- 9-2-82 54 Filed 9/2/82 Intervenor's Frank H. McGhee and Andrew McGhee's NOTICE OF APPEAL re: order of 4-26-82, 6-9-82 and 7-27-82 (\$70.00 PAID)



- 9-3-82 Transmitted 9/3/82 to the 7th Circuit Court of Appeals: the Short Record on Appeal consisting of copy of NOA, copy of docket and 7CCA info. sheet.
- 9-3-82 Mailed to all counsel of record: Cir. Rule 4 letter and copy of notice of appeal with copy of docket and 7CCA transcript info. sheet to appellant REW
- 9-9-82 55 Filed 9-9-82: Notice of appellant's filing
- 9-9-82 56 Filed Intervenor's/Appellant's Designation for inclusion in record on appeal AC
- 9-15-82 57 Filed 9-14-82: USCA Appearance form 82-2420 AC
- 9-16-82 Certified and transmitted 9-16-82 to the 7th Circuit Court of Appeal the Original Record on Appeal consisting of One volume of pleadings, together with One Confidential Item (#8), filed under separate certificate, for convenience sake
- 9-16-82 Mailed 9-16-82 to all counsel of record: copies of transmittal letter, list of documents and certificates REW
- 9-28-82 58 Filed 9-23-82: Notice of motion for stay
- 9-28-82 59 Filed 9-23-82: Intervenor's notice of motion
- 9-28-82 60 Filed 9/23/82: Intervenor's/Appellants motion for stay
- 9/28/82 61 Enter order dated 9/23/82: Intervenor's motion for stay pending appeal is denied— BUA, J AC  
Mld notice 9/28/82
- 10/5/82 62 Enter order dated 9/22/82: Status hearing held. Status hearing continued to December 8, 1982 at 9:30 a.m.—SUSSMAN, M AC Mld notice 10/5/82
- 11-10-82 63 Filed 11/9/82: Notice of motion; Plaintiffs motion for entry order setting date of respondents deposition
- 11/10/82 64 Enter order dated 11/9/82: C.F.T.C.'s motion for order setting date of respondents deposition is denied pending determination of motion for reconsideration pending in the U.S.C.A.—BUA, J AC Mld notice 11/10/82
- 11/17/82 65 Filed 11/16/82: Notice of motion of plaintiff

- 11/17/82 66 Filed 11/16/82: Renewed motion for entry of order setting date of respondents deposition
- 11/17/82 67 Enter order dated 11/16/82: Applicants renewed motion for order setting date for deposition is entered and continued— BUA, J AC Mld notice 11/17/82
- 12/9/82 68 Enter order dated 12/8/82; Status hearing held, status hearing continued to January 25, 1982 at 9:30 a.m.—SUSSMAN, M AC Mld notice 12/9/82
- 12/17/82 69 Enter order dated 12/16/82: All matters relating to the referral of the above entitled cause having been resolved, the cause is returned to the assigned Judge for further proceedings. Status hearing set for January 25, 1983 is stricken—SUSSMAN, M AC Mld notice 12/17/82
- 5/1/84 70 Filed 4/26/84: Certified copy of order from USCA: It is ordered that petition for rehearing be and the same is hereby DENIED.
- 5/1/84 71 Filed 4/26/84: It is ordered and adjudged by the USCA: that the District court judgment in this cause appealed from be and the same is hereby REVERSED, with costs in accordance with the opinion of this court filed this date.
- 5/1/84 Rec'd 4/26/84: Contents of record on appeal from USCA consisting of 1 v of pleadings. MN
- 11/1/84 72 Filed 10/31/84: Notice of removal of material from the custody of the clerk's office.
- 11/1/84 73 Enter order dated 10/31/84: Joseph Gac of the C.F.T.C. is given leave to withdraw the file in this cause for a period of 48 hours.— BUA, J. Mld notices 11/1/84. MN

CONSENT OF THE DIRECTORS OF  
CHICAGO DISCOUNT COMMODITY BROKERS, INC.  
TO THE ADOPTION OF RESOLUTIONS

The undersigned, being all of the Directors of CHICAGO DISCOUNT COMMODITY BROKERS, INC., an Illinois corporation, pursuant to the authority of Section 147.1 of The Business Corporation Act of the State of Illinois, do hereby given our written consent, in lieu of a meeting, to the adoption of the following resolution:

RESOLVED, that the proper officers of the corporation are authorized to redeem the 346 shares of common stock of Frank McGhee for the amount of \$15,000, payable on January 1, 1985.

FURTHER RESOLVED, that the proper officers of the corporation are hereby authorized to enter into and execute, on behalf of the corporation, a stock redemption agreement with Frank McGhee, in form satisfactory to counsel for the corporation, to accomplish such redemption, and all notes and collateral documents that may be required.

FURTHER RESOLVED, that the proper officers of the corporation are authorized and directed to execute and file, on behalf of the corporation, all reports and other documents that may be required with respect to such redemption, in compliance with all applicable federal and state laws, rules and regulations.

/s/ \_\_\_\_\_  
FRANK MCGHEE

/s/ \_\_\_\_\_  
ANDY MCGHEE

/s/ \_\_\_\_\_  
LARRY COTE

DATED: OCTOBER 23, 1979.

October 21, 1980

Frank H. McGhee, President  
Chicago Discount Commodity Brokers, Inc.  
175 W. Jackson Blvd., Suite 1430  
Chicago, Illinois 60604

Dear Frank:

I hereby resign as Officer and Director of Chicago Discount Commodity Brokers, Inc., effective immediately.

/s/ \_\_\_\_\_  
ANDREW M. MCGHEE

AMM/eo

cc: Larry M. Cote  
Gary A. Weintraub



October 22, 1980

TO: Frank McGhee, President

Chicago Discount Commodity Brokers

I am not in agreement with managerial operations of Chicago Discount Commodity Brokers. My input has been disregarded in controlling the activities of Chicago Discount Commodity Brokers. My function as an officer has been ineffectual and therefore I am resigning as a director of all offices which I hold. Including my office as Secretary and Vice President of Chicago Discount Commodity Brokers, effective October 22, 1980.

Sincerely,

/s/ \_\_\_\_\_  
LARRY COTE

CONSENT OF THE SOLE DIRECTOR OF  
CHICAGO DISCOUNT COMODITY BROKERS, INC.  
TO THE ADOPTION OF A RESOLUTION

The undersigned, being the sole Director and officer of CHICAGO DISCOUNT COMMODITY BROKERS, INC., an Illinois corporation, pursuant to the authority of Section 147.1 of the Illinois Business Corporation Act, do hereby give my written consent, in lieu of a meeting, to the adoption of the following resolution:

RESOLVED, that the Corporation, through Frank H. McGhee, President, is authorized to enter into a consent decree to be filed with and approved by the United States District Court for the Northern District of Illinois, Eastern Division, in form attached.

FURTHER RESOLVED, that Frank H. McGhee, President, is authorized to execute the said consent decree on behalf of the Corporation.

/s/ \_\_\_\_\_  
FRANK H. MCGHEE  
Sole Director

DATED: OCTOBER 27, 1980

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

No. 80 C 5755

COMMODITY FUTURES TRADING COMMISSION, PLAINTIFF,

v.

CHICAGO DISCOUNT COMMODITY BROKERS, INC.,  
DEFENDANT

TRANSCRIPT OF PROCEEDINGS

had in the hearing of the above-entitled cause before the Honorable JAMES B. MORAN, one of the Judges of said Court, in his courtroom in the United States Courthouse, Chicago, Illinois, on Monday, October 27, 1980, at 4:00 p.m.

APPEARANCES:

Mr. Constantine J. Gekas  
Ms. Gloria J. Matthews  
on behalf of the Plaintiff;  
Mr. Lloyd A. Kadish  
Mr. Peter Berman  
on behalf of the Defendant.

THE CLERK: 80 C 5755, CFTC versus Chicago Discount Commodity Brokers, Inc.; consent motion for preliminary injunction.

MR. GEKAS: Good afternoon, your Honor. My name is Chris Gekas and I am the regional counsel here in Chicago for the CFTC.

With me today is Miss Gloria Matthews, one of the staff attorneys from my office who represents the Commodity Futures Trading Commission in this matter.

MR. KADISH: Good afternoon, your Honor. My name is Lloyd Kadish and I am here with Peter Berman. We represent the Defendant CDCB.

THE COURT: Good afternoon.

MR. GEKAS: Your Honor, this is a matter that comes before the Court today for an emergency hearing on the Commission's complaint, which I believe the Court has before.

THE COURT: I do. Before I recessed, I took a fast look at the complaint in the draft order and the consent.

MR. GEKAS: Your Honor, we have signed copies of the original documents that the Commission filed downstairs in the Clerk's Office with the Court's original file. I understand that the consent, the signed copy of the consent along with the signed resolution of the Board of Directors of the corporation authorizing the consent are in the possession of defendant's counsel.

Briefly, your Honor, if I may, I will try and explain to the Court what this matter is.

THE COURT: Well, maybe I can summarize at least what it appears to be.

MR. GEKAS: Fine.

THE COURT: That is the defendant is in severe financial difficulties with undersegregated funds and counsel for defendant so notified the Commission on Saturday, and in order to protect people from getting hurt or more hurt, you are in here to try to put a freeze on everything so that there is a chance to sort things out.

MR. GEKAS: That is very succinctly stated, your Honor. That is correct.

I do additionally, your Honor, have some information that does not appear in the pleadings, specifically the names of two attorneys here in Chicago who have agreed to have their names submitted to the Court for the appointment of a receiver. The first is a partner, I believe, in the firm of Schiff, Hardin & Waite. His name is Andrew M. Kline, K-l-i-n-e. He is, I believe, in 7200 Sears Tower. He has been in practice in New York with a New York license since 1967, and, between 1973 and late 1979, he was with the Securities and Exchange Commission in their market regulations division in Washington, D.C., and was appointed director of that division in 1977 and served in that capacity until [4] 1979 when he came to join Schiff, Hardin. His firm and he himself has had, I believe, extensive expe-

rience with broker dealers, both in the securities field and in the commodities field.

The additional person is a Mr. John K. Notz, N-o-t-z, Junior, who is a partner in the firm of Gardner, Carton & Douglas. He has been in practice licensed since 19 He was in the Judge Advocate Corps of the United States Air Force since 1960. He has been with the firm here in Chicago doing trial work, and, since about 1962, a wide variety of general corporate work including work with broker-dealers and bankers and clearing houses in the commodities and securities area and has done a lot of trust-related work.

Neither of the gentlemen have been appointed as receivers before. However, we would proffer those two names, your Honor, to the Court. I do not believe—oh, I think I did, now that I think about it. I gave your minute clerk a copy of the order of appointment of the receiver.

THE COURT: You did.

MR. GEKAS: It is in blank as to the name of the particular lawyer who will serve as a receiver, should the Court choose to appoint one.

THE COURT: Mr. Kadish, do you have any—

MR. KADISH: We have no objection to either appointment, [5] your Honor.

THE COURT: Either one of them seems to be entirely appropriate. Does the Commission have any—

MR. GEKAS: Well, I would ask then that Mr. Notz be appointed, since I spoke with him today, select him if the Court has no objection. We would just choose arbitrarily between the two, equally qualified.

THE COURT: All right, that is satisfactory with me. The consent has been signed, but it hasn't been filed?

MR. BERMAN: That is correct, your Honor.

MR. GEKAS: That is correct, your Honor. We would ask that it be filed here in court if that would be appropriate.

THE COURT: That would seem to me to be appropriate before we go ahead.

MR. BERMAN: Here it is, your Honor.

MR. GEKAS: In addition, I believe there is a corporate resolution that is attached to it.

MR. BERMAN: That is correct.

MR. GEKAS: Your Honor, for the record, I would like to say that since the Commission learned on Saturday of this problem, at the first available opportunity, that is this morning, at about 8:30, we have sent auditors into the firm's offices and they have been engaged in the process of examining books and records since then.

[6] THE COURT: Ladies and gentlemen, I have a feeling you have got a busy week ahead of you.

MR. GEKIS: That is exactly right.

THE COURT: John K. Notz, N-o-t-z?

MR. GEKIS: Yes, your Honor, Junior. He asked me to specify the Junior, your Honor.

THE COURT: Done.

MR. GEKIS: Thank you very much, your Honor. We can get copies, certified copies of the Court's orders this afternoon I presume, by what means?

THE CLERK: As soon as I take it upstairs.

MR. GEKIS: Great. Thank you very much, your Honor.

MS. MATTHEWS: Thank you, your Honor.

MR. KADISH: Thank you, your Honor.

(Which were all the proceedings had and taken on the day and date aforesaid in the above-entitled cause).



IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

No. 80 C 5755

COMMODITY FUTURE; TRADING COMMISSION, PLAINTIFF

v.

CHICAGO DISCOUNT COMMODITY BROKERS, INC.,  
DEFENDANT

**CERTIFICATE**

I, K. JOSEPH SNYDER, do hereby certify that the foregoing is a true, correct and complete transcript of the proceedings had in the hearing of the above-entitled cause before the Honorable JAMES B. MORAN, one of the Judges of said Court, in his courtroom in the United States Courthouse Chicago, Illinois, on Monday, October 27, 1980.

/s/

*Official Court Reporter  
United States District Court  
Northern District of Illinois  
Eastern Division*

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

No. 80 B 14472

IN RE:

CHICAGO DISCOUNT COMMODITY BROKERS, INC., DEBTOR

**ORDER**

Upon the Application of Chicago Discount Commodity Brokers, Inc., debtor, praying for authority to appoint the Law Firm of Chatz, Sugarman, Abrams, Haber & Fagel of Chicago, Illinois; specifically, James A. Chantz, Richard N. Golding, Michael L. Stone, Ilene F. Goldstein, and Mary Anne Spellman to represent them as debtor in the Chapter 7 Proceeding and upon the Affidavit of James A. Chatz, one of the partners of Chatz, Sugarman, Abrams, Haber & Fagel; and it appearing that James A. Chatz is an attorney duly admitted to practice in this Court; and the Court being fully satisfied that neither Chatz, Sugarman, Abrams, Haber & Fagel nor James A. Chatz, Richard N. Golding, Michael L. Stone, Ilene F. Goldstein, or Mary Anne Spellman represents an interest adverse to Chicago Discount Commodity Brokers, Inc. or its estate in the matters upon which Chatz, Sugarman, Abrams, Haber & Fagel are to be engaged; that employment is necessary and would be in the best interest of the estate; due notice having been given to all parties in interest; this Court having jurisdiction; and the Court being fully advised in the premises, weherefore:

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Chicago Discount Commodity Brokers, Inc., as debtor, be and is authorized to employ the Law Firm of Chatz, Sugarman, Abrams, Haber & Fagel to represent them as debtor in this Chapter 7 Proceeding of the Bankruptcy Code.

ENTER:

/s/

DATED: NOVEMBER 24, 1980



IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

No. 80 B 14472

CHICAGO DISCOUNT COMMODITY  
BROKERS, INC., DEBTOR

**ORDER**

This matter coming on to be heard upon the Motion of Chicago Discount Commodity Brokers, Inc. to strike the appearance of David F. Heroy as attorney for Chicago Discount Commodity Brokers, Inc.; due notice having been given to all parties in interest; this Court having jurisdiction over the subject matter; and this Court being fully advised in the premises:

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that this Court enters an Order Striking the Appearance of David F. Heroy as attorney of record for Chicago Discount Commodity Brokers, Inc.

ENTER:

/s/

*Bankruptcy Judge*

Dated: NOVEMBER 28, 1980

**Excerpt from August 26, 1981  
Deposition of Gary Weintraub**

A (Referring to an October 20, 1980, deposit of \$20,798.05 in Weintraub Account 00150)

Q Did you deposit that amount into that account on that date?

A NO.

Q Do you know if anyone deposited that money in that account on that date?

(Discussion off the record.)

MR. BORAKS: Could I request reading back of that last question?

(Question read.)

MR. BORAKS: I think that we've reached the first point in time where we have a bit of a snag, whether Mr. Weintraub knows that and the circumstances of whatever knowledge he has is related to confidential communications between him and a client; and unfortunately, I just don't think he can answer that question.

MS. OHL MILLER: All right. Can we have him assert the privilege for the record?

MR. BORAKS: Sure, sure.

THE WITNESS: I would like to answer the question, but I feel that, consistent with Attorney-Client privilege constraints with which I'm faced, that I cannot answer the question unless authorized to do so by client or clients.

(August 26, 1981 Dep. at 148-9)

\* \* \*

Q Did you make any inquiry into the entry?

A Yes.

Q To whom did you make the inquiry?

A I don't think I could answer that question consistent with the rights and privileges of clients and feel constrained to assert the client's privilege.

(*id.* at 150)

\* \* \*

[A-7] B. (Referring to an October 20, 1980, deposit of \$31,657 in Weintraub Account 00151)

Q Did you deposit this amount in this account on or about that date?

A No, I did not.

Q Do you know if a deposit was made on that date in that amount?

A For the same reasons as with respect to the last statement that you showed me, I believe I must assert the privilege of the client with respect to that question, and perhaps to save some time, I think that's also going to be true with respect to 00152—

MR. BORAKS: Why don't you let her do it by the numbers?

THE WITNESS: Okay, I'm sorry.

MS. OHL MILLER: Q Do you know who was responsible for that entry?

A I believe I must also assert the privilege of the client with respect to that question, also.

(Id. at 151)

\* \* \*

Q When did you first become aware of this entry? We're still talking about in Account 00151.

A My recollection, as I sit here, is that it would have been when I received the statement.

Q Did you make any inquiry into the entry of concerning the entry?

A The inquiry would have been the same inquiry that I mentioned a moment ago.

Q Okay, and to whom was that inquiry directed?

A I don't believe that I can answer that question consistent with the rights and privileges of client or clients.

(Id. at 151-2)

\* \* \*

[A-8] C (Referring to an October 20, 1980, deposit of \$31,468.50 into Weintraub Account 00152)

Q Did you deposit that amount in that account on that date?

A No.

Q Do you know if anyone deposited that amount in this account on that date?

A I believe that I must assert the rights and privileges of client or clients with respect to that question.

\* \* \*

Q Did you authorize this entry or approve of this entry in any fashion?

A No.

Q When you first learned of the entry, did you question anyone about it?

A Yes.

Q And when would that have been?

A My recollection is that it was a day or several days after the date of the statement.

Q And it would have been the statement that you questioned the entries in the Account 00150 and 00151?

A Yes.

Q And to whom did you direct that inquiry?

A Consistent with the rights and privileges of client or clients, I don't believe I could answer that question.

(Id. at 153-4)

\* \* \*

[A-9] D. (In reference to respondent's access to CDCB safe deposit boxes)

Q What was the purpose of going to the safe deposit box on those occasions?

A To place—

MR. BORAKS: One second.

(Witness consults with counsel.)

THE WITNESS: Could you read back the question.

(Question read.)

THE WITNESS: I believe I must assert the rights and privileges of client or clients with respect to that particular question.

(Id. at 159-60)

\* \* \*

E Q Was there any discussion with Frank McGhee as to your duties and responsibilities as attorney for the corporation?

A I think I must assert the Attorney-Client privilege with respect to that question.

(*Id.* at 182)

\* \* \*

[A-10] F Q Was there ever a discussion with Frank McGhee as to the number of hours that you would work on business pertaining to Chicago Discount Commodity Brokers after August of 1980?

MR. BORAKS: I'm sorry, could you read that question back?

(Question read.)

MR. BORAKS: Off the record.

(Discussion read).

THE WITNESS: I feel constrained to assert Attorney-Client privilege with respect to that question. Also, I must decline to answer unless authorized by the client to do so.

(*Id.* at 182-3)

\* \* \*

G Q Did Ms. Blumeyer have a personal relationship with Frank McGhee?

A I feel constrained to assert the Attorney-Client privilege with respect to that particular question and must decline to answer unless otherwise directed by client.

(*Id.* at 197)

\* \* \*

[A-11] H Q Do you know if Ms. Blumeyer had commodity accounts at Chicago Discount?

A I believe that she did.

Q Upon what do you base that belief?

A As I sit here today, I'm really not sure of the source of that belief, and I'm reluctant to get into that since the source of that belief may be within the matters covered by privilege, Attorney-Client privilege.

MS. HARVITT: What grounds are you asserting the privilege, the Attorney-Client privilege?

MR. BORAKS: What if Frank McGhee told him that?

MS. HARVITT: It's unclear to me whether or not Nancy Blumeyer is the client or McGhee is the client or CDCB is the client. That's all I'm trying to establish.

MR. BORAKS: Well, CDCB is a client. We've made that representation. Frank is. We made that representation.

Did you ever have direct attorney-client relationship with Nancy Blumeyer?

THE WITNESS: With respect to Ms. Blumeyer, I don't recollect representing her on any specific matter although I did have discussion or discussions with her in the context of potential representation. I have not at this stage undertaken such representation.

MS. OHL MILLER: Q Were these discussions with Nancy Blumeyer before or after the close of business of Chicago Discount?

MR. BORAKS: Which discussions, the one about possible representation?

MS. OHL MILLER: The ones about possible representation.

MR. BORAKS: His position on that it is my view, and I so advise my client, is that discussions leading to the possibility of representation are covered by privilege even if representation does not ensue; and if I'm right about that—and I'm confident that I am—that when, where, and what was said as matters pertaining to these discussions are all confidential and cannot be disclosed. I think there is—the line is that you can—it's not privilege that such conversations took place, but anything else about the conversations, including when, where, and what context and what was said, is all privilege.

(*Id.* at 198-9).

\* \* \*

[A-12] I Q [D]id you have any conversations with (CDCB employee) Tom Suba about Chicago Discount, or rather the operations of Chicago Discount?



A It's a very general question. I think the answer is yes.

Q Can you recall the subject matter covered in any of these discussions?

MR. BORAKS: We're getting into a problem area again. I don't have recent Supreme Court case, Upjohn or whatever it's called, but Mr. Weintraub has the same problem, same constraints I think under that case in terms of his discussions with company employees about company matters as he would with respect to any other aspect of the Attorney-Client privilege. That's my interpretation of what that case stand for, so I don't think he has any discretion to waive that privilege.

(Id. at 201-2)

\* \* \*

J (In regard to parties held at CDCB offices)

Q Those two parties, did they have a purpose?

A You mean what was the occasion?

Q Yes.

MR. BORAKS: Excuse me a minute.

(Witness consults with counsel.)

THE WITNESS: With respect to what I believe was the first of the two parties that I mentioned, I think the occasion was basically the first anniversary of the company under its head management. With respect to the second, I don't feel that I can answer the question consistent with the constraints of Attorney-Client privilege.

(Id. at 203-4)

\* \* \*

[A-13] K MS. OHLMILLER: Q Was there discussion amongst people present at the party to the effect that Frank McGhee had made a million dollars trading commodities? I'm still talking about the first party.

A I don't believe I could answer that question based upon the constraints of Attorney-Client privilege.

Q Were there discussions amongst the people present at the party to the effect that customer equity in the firm or carried by the firm amounted to in excess of a million dollars?

A I don't believe I could answer that question based upon the constraints of Attorney-Client privilege.

Q With regard to the second party, do you recall who was present?

A Again, I think the best answer I could give is most likely most of the employees and a number of outside people.

Q At the second party was there any discussion by any of the people present to the effect that Frank McGhee had made a million dollars trading commodities?

A I don't believe that I could answer that question consistent with the constraints of Attorney-Client privilege.

Q At the second party among the people present was there any discussion to the effect that Chicago Discount carried customer equity of several million dollars?

A I don't believe I could answer that question consistent with the constraints of Attorney-Client privilege.

(Id. at 206-7)

\* \* \*

[A-14] L Q Can you explain the various arrangements that were made to purchase the company and fund it?

A I don't believe I can answer that question consistent with the constraints of Attorney-Client privilege.

(Id. at 208)

\* \* \*

M (In reference to loan of \$135,000 loaned by CDCB to two officers)

Q What were the circumstances surrounding those personal loans to the officers?

A I don't believe I could answer that question consistent with the constraints of Attorney-Client privilege.

(Id. at 209)

\* \* \*

N MS. OHLMILLER: Q Are you aware through any means of the purchase or sale of precious metals or coins through the Republic National Bank of New York?

A I don't believe I could answer that question consistent with the constraints of Attorney-Client privilege.

(*Id.* at 209-10)

\* \* \*

[A-15] O (In regard to access to company safe, Respondent stated he had on occasion opened the safe so petty cash could be removed)

Q Could there have been any other reason that you opened the safe?

MR. BORAKS: I think I must be getting worn down here. I think I should have advised my client at the outset of this line of questioning that the policies regarding access to the safe and the procedures regarding it are secrets of his client which he is not authorized to disclose, so having been asleep at the switch when this line of questioning started, I think I'm going to have to advise Mr. Weintraub that he runs the risk of breaching his obligations by continuing to answer questions that go in that direction.

MS. HARVITT: Well, the line of questioning pertains to Mr. Weintraub's opening of the safe and his activity, not the activity of a principal of the firm or employees of the firm.

MR. BORAKS: Wait a minute. You asked him why he was granted access, which has to do with the decision made as to the policy of who gets access and why; and the questioning seems to be by way of follow-up to that question; and I think that even though he's already answered it, I think that the issue as to how the safe was handled, who had access, and why they had access and what they did with their access are questions that he should not be answering; so I'm going to advise him not to answer.

MS. HARVITT: Q Okay. Mr. Wintraub, do you refuse to answer that question on the basis of your counsel's advice?

A Based on the statement and advice of counsel, I decline to answer any question.

(*Id.* at 212-4)

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

CIVIL ACTION NO. 81 C 6996

In the Matter of An Application to  
Enforce an Administrative Subpoena  
of the

COMMODITY FUTURES TRADING COMMISSION, APPELLANT,

v.

GARY WEINTRAUB, RESPONDENT.

APPLICATION FOR AN ORDER TO SHOW CAUSE  
AND ORDER TO COMPEL ANSWERS TO QUESTIONS

JURISDICTION AND VENUE

1. The Commodity Futures Trading Commission ("Commission") is an independent federal regulatory agency responsible for administering and enforcing the provisions of the Commodity Exchange Act, as amended ("Act"), 7 U.S.C. §§ 1 *et seq.*

2. The Commission brings this action pursuant to Section 6(b) of the Act, 7 U.S.C. § 15, and applies to this Court for the Order to Show Cause, in the form attached, requiring the Respondent Gary Weintraub to show cause why he should not be ordered by this Court to answer certain questions as required by a subpoena *duces tecum* issued by the Commission and duly served upon him, and for an Order Compelling Answers to Questions previously put to him to which he claimed a privilege.

3. Section 6(b) of the Act, 7 U.S.C. § 15, confers jurisdiction upon this Court to enforce an administrative subpoena issued by the Applicant Commission.

4. The subpoena *duces tecum* issued by the Commission to the Respondent required his appearance to testify and



produce documents at the Commission's offices in Chicago, Illinois.

#### RESPONDENT

5. Gary Weintraub ("Weintraub"), 1221 N. Dearborn Street, Chicago, Illinois 60610, has never been registered with the Commission in any capacity. Weintraub is an attorney who at various times has been associated, as counsel and otherwise, with Chicago Discount Commodity Brokers, Inc. ("CDCB"), a commodity brokerage firm which was registered with the Commission and which is now in bankruptcy. Weintraub maintained several commodity futures trading accounts with CDCB at various times during 1981.

#### RESPONDENT'S FAILURE TO COMPLY WITH AN ADMINISTRATIVE SUBPOENA AND TO PROVIDE ANSWERS TO QUESTIONS

6. On November 3, 1980, the Commission entered an Order entitled "In the Matter of Chicago Discount Commodity Brokers, Inc." pursuant to Section 6(b) of the Act, 7 U.S.C. § 15, designating various staff members of the Commission to administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, require the production of any and all books, papers, correspondence, memoranda, records, and other tangible things relevant to an investigation being conducted pursuant to Sections 6(b) and 8(a) of the Act, 7 U.S.C. §§ 15 and 12(a), for the purpose of determining whether CDCB or any entity or person affiliated with, related to, or associated with said firm or persons have engaged in or are engaging in violations of Sections 4b, 4d, 4f, 4g, 6(b) and 9 of the Act, as amended, 7 U.S.C. §§ 6b, 6d, 6f, 6g, 9 and 13, and Regulations 1.10, 1.12, 1.17, 1.18 and 1.20 through 1.36 promulgated thereunder, 17 C.F.R. 1.10, 1.12, 1.17, 1.18, and 1.20 through 1.36 (1980), or in similar acts or practices in violation of any other provisions of the Act or the Regulations promulgated thereunder. The Order was amended on November 17 and December 29, 1980, and on October 14, November 6, and November 24, 1981, to designate additional staff members as officers to issue subpoenas and to take testimony. (A

copy of the Order and the Amendments are attached hereto as Exhibit A).

7. Acting under the November 3, 1980, Order and amendments, a Commission staff member issued an administrative subpoena *duces tecum* to Weintraub on January 28, 1981. (A copy of the subpoena *duces tecum* is attached hereto as Exhibit B). Weintraub appeared in the Chicago offices of the Commission on January 26 and 27, 1981, and again on August 26, 1981, to testify in the administrative investigation.

8. During the testimony given on February 26 and 27, 1981, Weintraub, represented by counsel testified, first as to his legal representation of CDCB, and second, as to his personal business relationship with CDCB. As to his legal relationship with CDCB, Weintraub explained that he had acted as counsel for CDCB and its principals both as an associate of the law firm of Jann, Carroll, Kruse, Sain & Dolin and as in-house counsel at CDCB after leaving the firm in August, 1980. As to his personal business relationship with CDCB, Weintraub testified that he had had three personal commodity trading accounts at CDCB, that he personally had received a loan or gift of \$18,950 from CDCB for the purchase of a seat on the Mid-America Commodity Exchange, and that the possibility that he would trade for CDCB had been contemplated when that seat was purchased. (See Weintraub Deposition of February 27 at page 88, attached hereto as Exhibit C). Weintraub did not assert the Attorney-Client privilege on either February 26 or 27.

9. On August 26, 1981, Weintraub returned to the Commission's Chicago office for the continuation of his deposition. Weintraub was at that time represented by new counsel, Robert A.W. Boraks ("Boraks"). Prior to the recommencement of Weintraub's testimony, Boraks stated that "Weintraub had an Attorney-Client relationship with Chicago Discount Commodity Brokers and one of its principals" and that "[a]t least one of Chicago Discount's principals has made it absolutely plain to Mr. Weintraub that he has every intention and desire to assert the full measure of whatever constraints there might be on Mr. Weintraub be-



cause of his professional relationship with this person; and those instructions have to be obeyed, in my judgment;" (See Weintraub Deposition of August 26, 1981, at page 130, attached hereto as Exhibit D). Boraks did not identify the CDCB principal on whose behalf the privilege was thus asserted. Boraks additionally referred to Canon 4-101 of the Illinois Supreme Court's Code of Professional Responsibility which, he asserted, extends the Attorney-Client privilege to "secrets", *e.g.*, information which, though not "confidential," could prove "embarrassing" or "detrimental" to the client. (See Exhibit D at page 131.)

10. Thereafter Weintraub and his counsel, Boraks, raised the Attorney-Client privilege and the Ethical Canon as bars to answering the following questions:

[6] (Referring to an October 20, 1980, deposit of \$20,798.05 in Weintraub Account 00150)

Q Did you deposit that amount into that account on that date?

A No.

Q Do you know if anyone deposited that money in that account on that date?

(Discussion off the record.)

MR. BORAKS: Could I request reading back of that last question?

(Question read.)

MR. BORAKS: I think that we've reached the first point in time where we have a bit of a snag, whether Mr. Weintraub knows that and the circumstances of whatever knowledge he has is related to confidential communications between him and a client; and unfortunately, I just don't think he can answer that question.

MS. OHLMILLER: All right. Can we have him assert the privilege for the record?

MR. BORAKS: Sure, sure.

THE WITNESS: I would like to answer the question, but I feel that, consistent with Attorney-Client privilege constraints with which I'm faced, that I cannot answer the question unless authorized to do so by client or clients.

(August 26, 1981 Dep. at 148-9)

\* \* \*

Q Did you make any inquiry into the entry?

A Yes.

Q To whom did you make the inquiry?

A I don't think I could answer that question consistent with the rights and privileges of clients and feel constrained to assert the client's privilege.

(*Id.* at 150)

\* \* \*

[7] B. (Referring to an October 20, 1980, deposit of \$31,657 in Weintraub Account 00151)

Q Did you deposit this amount in this account on or about that date?

A No, I did not.

Q Do you know if a deposit was made on that date in that amount?

A For the same reasons as with respect to the last statement that you showed me, I believe I must assert the privilege of the client with respect to that question, and perhaps to save some time, I think that's also going to be true with respect to 00152—

MR. BORAKS: Why don't you let her do it by the numbers?

THE WITNESS: Okay, I'm sorry.

MS. OHLMILLER: Q Do you know who was responsible for that entry?

A I believe I must also assert the privilege of the client with respect to that question, also.

(*Id.* at 151)

\* \* \*

Q When did you first become aware of this entry? We're still talking about in Account 00151.

A My recollection, as I sit here, is that it would have been when I received the statement.

Q Did you make any inquiry into the entry of concerning the entry?

A The inquiry would have been the same inquiry that I mentioned a moment ago.

Q Okay, and to whom was that inquiry directed?

A I don't believe that I can answer that question consistent with the rights and privileges of client or clients.  
(*Id.* at 151-2)

\* \* \*

[8] C. (Referring to an October 20, 1980, deposit of \$31,468.50 into Weintraub Account 00152)

Q Did you deposit that amount in that account on that date?

A No.

Q Do you know if anyone deposited that amount in this account on that date?

A I believe that I must assert the rights and privileges of client or clients with respect to that question.

\* \* \*

Q Did you authorize this entry or approve of this entry in any fashion?

A No.

Q When you first learned of the entry, did you question anyone about it?

A Yes.

Q And when would that have been?

A My recollection is that it was a day or several days after the date of the statement.

Q And it would have been the statement that you questioned the entries in the Account 00150 and 00151?

A Yes.

Q And to whom did you direct that inquiry?

A Consistent with the rights and privileges of client or clients, I don't believe I could answer that question.

(*Id.* at 153-4)

\* \* \*

[9] D. (In reference to respondent's access to CDCB safe deposit boxes)

Q What was the purpose of going to the safe deposit box on those occasions?

A To place—

MR. BORAIS: One second.

(Witness consults with counsel.)

THE WITNESS: Could you read back the question.

(Question read.)

THE WITNESS: I believe I must assert the rights and privileges of client or clients with respect to that particular question.

(*Id.* at 159-60)

\* \* \*

E. Q Was there any discussion with Frank McGhee as to your duties and responsibilities as attorney for the corporation?

A I think I must assert the Attorney-Client privilege with respect to that question.

(*Id.* at 182)

\* \* \*

[10] F. Q Was there ever a discussion with Frank McGhee as to the number of hours that you would work on business pertaining to Chicago Discount Commodity Brokers after August of 1980?

MR. BORAIS: I'm sorry, could you read that question back?

(Question read.)

MR. BORAIS: Off the record.

(Discussion read.)

THE WITNESS: I feel constrained to assert Attorney-Client privilege with respect to that question. Also, I must decline to answer unless authorized by the client to do so.

(*Id.* at 182-3)

\* \* \*

G. Q Did Ms. Blumeyer have a personal relationship with Frank McGhee?

A I feel constrained to assert the Attorney-Client privilege with respect to that particular question and must decline to answer unless otherwise directed by client.

(*Id.* at 197)

\* \* \*

[11] H. Q Do you know if Ms. Blumeyer had commodity accounts at Chicago Discount?

A I believe that she did.

Q Upon what do you base that belief?

A As I sit here today, I'm really not sure of the source of that belief, and I'm reluctant to get into that since the



source of that belief may be within the matters covered by privilege, Attorney-Client privilege.

MS. HARVITT: What grounds are you asserting the privilege, the Attorney-client privilege?

MR. BORAKS: What if Frank McGhee told him that?

MS. HARVITT: It's unclear to me whether or not Nancy Blumeyer is the client or McGhee is the client or CDCB is that client. That's all I'm trying to establish.

MR. BORAKS: Well, CDCB is a client. We've made that representation. Frank is. We made that representation.

Did you ever have direct attorney-client relationship with Nancy Blumeyer?

THE WITNESS: With respect to Ms. Blumeyer, I don't recollect representing her on any specific matter although I did have discussion or discussions with her in the context of potential representation. I have not at this stage undertaken such representation.

MS. OHLMILLER: Q Were there discussions with Nancy Blumeyer before or after the close of business of Chicago Discount?

MR. BORAKS: Which discussions, the one about possible representation?

MS. OHLMILLER: The ones about possible representation.

MR. BORAKS: His position on that it is my view, and I so advise my client, is that discussions leading to the possibility of representation are covered by privilege even if representation does not ensue; and if I'm right about that—and I'm confident that I am—that when, where, and what was said as matters pertaining to these discussions are all confidential and cannot be disclosed. I think there is—the line is that you can—it's not privilege that such conversations took place, but anything else about the conversations, including when, where, and what context and what was said, is all privilege.

(*Id.* at 198-9).

\* \* \*

[12] I. Q [D]id you have any conversations with (CDCB employee) Tom Suba about Chicago Discount, or rather the operations of Chicago Discount?

A It's a very general question. I think the answer is yes.

Q Can you recall the subject matter covered in any of these discussions?

MR. BORAKS: We're getting into a problem area again. I don't have recent Supreme Court case, Upjohn or whatever it's called, but Mr. Weintraub has the same problem, same constraints I think under that case in terms of his discussions with company employees about company matters as he would with respect to any other aspect of the Attorney-Client privilege. That's my interpretation of what that case stand for, so I don't think he has any discretion to waive that privilege.

(*Id.* at 201-2)

\* \* \*

J. (In regard to parties held at CDCB offices)

Q Those two parties, did they have a purpose?

A You mean what was the occasion?

Q Yes.

MR. BORAKS: Excuse me a minute.

(Witness consults with counsel.)

The WITNESS: With respect to what I believe was the first of the two parties that I mentioned, I think the occasion was basically the first anniversary of the company under its head management. With respect to the second, I don't feel that I can answer the question consistent with the constraints of Attorney-Client privilege.

(*Id.* at 203-4)

\* \* \*

[13] K. MS. OHLMILLER: Q Was there discussion amongst people present at the party to the effect that Frank McGhee had made a million dollars trading commodities? I'm still talking about the first party.

A I don't believe I could answer that question based upon the constraints of Attorney-Client privilege.

Q Were there discussions amongst the people present at the party to the effect that customer equity in the firm or carried by the firm amounted to in excess of a million dollars?



A I don't believe I could answer that question based upon the constraints of Attorney-Client privilege.

Q With regard to the second party, do you recall who was present?

A Again, I think the best answer I could give is most likely most of the employees and a number of outside people.

Q At the second party was there any discussion by any of the people present to the effect that Frank McGhee had made a million dollars trading commodities?

A I don't believe that I could answer that question consistent with the constraints of Attorney-Client privilege.

Q At the second party among the people present was there any discussion to the effect that Chicago Discount carried customer equity of several million dollars?

A I don't believe I could answer that question consistent with the constraints of Attorney-Client privilege.

(*Id.* at 206-7)

\* \* \*

[14] L. Q Can you explain the various arrangements that were made to purchase the company and fund it?

A I don't believe I can answer that question consistent with the constraints of Attorney-Client privilege.

(*Id.* at 208)

\* \* \*

M. (In reference to loan of \$135,000 loaned by CDCB to two officers)

Q What were the circumstances surrounding those personal loans to the officers?

A I don't believe I could answer that question consistent with the constraints of Attorney-Client privilege.

(*Id.* at 209)

\* \* \*

N. MS. OHLMILLER: Q Are you aware through any means of the purchase or sale of precious metals or coins through the Republic National Bank of New York?

A I don't believe I could answer that question consistent with the constraints of Attorney-Client privilege.

(*Id.* at 209-10)

\* \* \*

[15] O. (In regard to access to company safe, Respondent stated he had on occasion opened the safe so petty cash could be removed)

Q Could there have been any other reason that you opened the safe?

MR. BORAKS: I think I must be getting worn down here. I think I should have advised my client at the outset of this line of questioning that the policies regarding access to the safe and the procedures regarding it are secrets of his client which he is not authorized to disclose, so having been asleep at the switch when this line of questioning started, I think I'm going to have to advise Mr. Weintraub that he runs the risk of breaching his obligations by continuing to answer questions that go in that direction.

MR. HARVITT: Well, the line of questioning pertains to Mr. Weintraub's opening of the safe and his activity, not the activity of a principal of the firm or employees of the firm.

MR. BORAKS: Wait a minute. You asked him why he was granted access, which has to do with the decision made as to the policy of who gets access and why; and the questioning seems to be by way of follow-up to that question; and I think that even though he's already answered it, I think that the issue as to how the safe was handled, who had access, and why they had access and what they did with their access are questions that he should not be answering; so I'm going to advise him not to answer.

MS. HARVITT: Q Okay. Mr. Weintraub, do you refuse to answer that question on the basis of your counsel's advice?

A Based on the statement and advice of counsel, I decline to answer any question.

(*Id.* at 212-4)

11. Weintraub's use of the Attorney-Client privilege is inappropriate in each of the above instances and constitutes an abuse of that privilege. The Attorney-Client privilege cannot be used as a subterfuge to thwart legitimate access to information sought in an administrative investigation.

12. The testimony and documents requested of Weintraub are currently not in the possession of the Commission and are relevant to the Commission's private investigation to determine whether there have been violations of the Act. (See Affidavit of Charlotte A. Ohlmiller filed herewith as Exhibit E).

13. The relief requested herein has not been previously requested of this or any other Court or tribunal.

#### RELIEF

WHEREFORE, the Commission respectfully requests that this Court:

(1) Enter on Order to Show Cause requiring Respondent Weintraub to appear before the Court on a date to be fixed and to show cause, if any, why he should not be compelled to comply with the subpoena served upon him by answering certain questions which he refused to answer;

(2) Enter an order requiring obedience to the Administrative Subpoena directing Weintraub to appear, give testimony in answer to questions listed in this motion; and

(3) Grant such other and further relief as may be just and proper under the circumstances.

Respectfully submitted,

/s/ Constantine J. Gekas

CONSTANTINE J. GEKAS  
Regional Counsel

/s/ Susan N. Sekuler

SUSAN N. SEKULER

/s/ Andrianne S. Harvitt

ADRIANNE S. HARVITT  
Attorneys for Applicant  
Commodity Futures Trading  
Commission

233 South Wacker Drive, Suite 4600  
Chicago, Illinois 60606  
(312) 353-6623

Dated: DECEMBER 15, 1981

#### LIST OF EXHIBITS

EXHIBIT A—Order and Amendments.

EXHIBIT B—Subpoena *Duces Tecum*, January 28, 1981.

EXHIBIT C—Weintraub Deposition of February 27, 1981, page 88.

EXHIBIT D—Weintraub Deposition of August 26, 1981, pages 130-132, 148-154, 159-169, 180-183, 191-214.

EXHIBIT E—Affidavit of Charlotte A. Ohlmiller.

NOTE: The above exhibits are being filed under a protective order for the review of judicial personnel only.

### CERTIFICATE OF SERVICE

This is to certify that a copy of the afore-mentioned Notice of Filing and accompanying Application was mailed to the party listed below this 15th day of December, 1981.

Robert A.W. Boraks, Esq.  
2000 L Street, N.W.  
Washington, D.C. 20036

/s/ Adrienne S. Harvitt  
ADRIANNE S. HARVITT  
*Attorney for*  
*Commodity Futures Trading*  
*Commission*

### EXHIBIT A

COMMODITY FUTURES TRADING COMMISSION  
233 SOUTH WACKER DRIVE, SUITE 4600, CHICAGO  
IL 60606

March 5, 1982

John K. Notz, Jr., Esq.  
Interim Trustee  
4600 One First National Plaza  
Chicago, Illinois 60603

Dear Mr. Notz:

As the interim trustee for the debtor-corporation Chicago Discount Commodity Broker, Inc. ("CDCB"), you are undoubtedly aware that former officers of CDCB have at various times asserted an attorney-client privilege on behalf of CDCB and themselves as officers of CDCB. As a result of the officers' assertion of the corporate privilege, the former general counsel for CDCB, Gary Weintraub, has refused to testify in the CFTC's administrative proceedings concerning certain corporate policies, corporate transactions, and various acts of, or communications with, corporate employees, agents, and officers, notably Frank H. McGhee. Consequently, the CFTC has instituted an action in the United States District Court for the Northern District of Illinois (*CFTC v. Weintraub*, No. 81 C 6996, filed December 15, 1981) to compel Mr. Weintraub's testimony regarding such matters.

The CFTC has taken the position in its pleadings that the matters to which Mr. Weintraub refuses to testify are simply not covered by an attorney-client privilege for various enumerated reasons. (Enclosed is a copy of the CFTC's brief filed in connection with this matter). Nevertheless, we consider this to be the appropriate time to raise with you the issue of the ability of a former corporate officer to even assert an attorney-client privilege on behalf of a bankrupt corporation in the process of liquidation. In light of recent case law, it is the CFTC's position that neither Frank McGhee nor any other former officer, director, or employee



of the debtor-corporation has the ability to assert an attorney-client privilege at this time on behalf of the corporation for communications pertaining to corporate operations. See *In Re O.P.M. Leasing Services, Inc.*, 13 B.R. 54, *aff'd*, 13 B.R. 64 (S.D.N.Y. 1981), *aff'd*, Bank. L. Rep. (CCH) ¶ 68,497 (2d Cir. 1982). *Citibank, N.A. v. Andros*, Bank. L. Rep. (CCH) ¶ 68,505 (8th Cir. 1981). Instead, the CFTC believes that the ability to assert an attorney-client privilege on behalf of CDCB lies with you as the interim trustee for the debtor-corporation.

For over a year now, the CFTC has been diligently attempting to locate missing customer funds and determine the causes for CDCB's bankruptcy. Since the CFTC's effort to reconstruct the daily business operations of the debtor-corporation has now been frustrated by the refusal of Mr. Weintraub to testify, we now consider it appropriate to ask you as interim trustee to waive the attorney-client privilege on behalf of CDCB. We deem such a waiver to be in the best interests of the creditors of CDCB as well as the corporate debtor.

Since the court will be considering the merits of the CFTC's action very shortly, your immediate attention to our request would be greatly appreciated.

Sincerely,

/s/ CONSTANTINE J. GEKAS  
CONSTANTINE J. GEKAS  
Regional Counsel

CJG/prl

cc: David F. Heroy, Esq.  
Gardner Carton & Douglas  
One First National Plaza  
Suite 4600  
Chicago, Illinois 60603

CHICAGO DISCOUNT COMMODITY BROKERS INC.  
175 West Jackson Blvd., Chicago, Illinois 60604  
(312) 922-5888

March 11, 1982

Constantine J. Gekas, Esq.  
4600 Sears Tower  
233 South Wacker Drive  
Chicago, Illinois 60606

Re: *Chicago Discount Commodity Brokers, Inc.*

Dear Mr. Gekas:

I have received your letter dated March 5, 1982 with respect to the attorney/client privilege held by the above-named debtor. As Interim Trustee for this debtor I hereby waive any interest I have in the attorney/client privilege possessed by that debtor for any communications or information occurring or arising on or before October 27, 1980. This waiver specifically does not apply to the relationship between me and my attorneys of Gardner, Carton & Douglas.

Very truly yours,  
/s/ John K. Notz, Jr.  
JOHN K. NOTZ, JR.  
Interim Trustee

JKN/do

cc: David F. Heroy

UNITED STATES DISTRICT COURT,  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

Presiding Judge, Honorable Nicholas J. Bua  
Cause No. 81 C 6996 Date June 30, 1982  
COMMODITY FUTURES TRADING COMMISSION

v.

WEINTRAUB

MOTION TO INTERVENE

The rule of this court require counsel to furnish the names of all parties entitled to notice of the entry of an order and the names and addresses of their attorneys. Please do this immediately below (separate lists may be appended).

Names and Addresses of moving counsel

Irwin G. Jann and James W. Stephenson  
Jann, Carroll, Sain & Dolin, Ltd.  
55 East Monroe Street—Suite 4444  
Chicago, Illinois 60603

Representing

Intervenors, Frank H. McGhee and Andrew McGhee

Names and Addresses of other counsel entitled to notice and names of parties they represent.

Constantine J. Gekas and Andrienne S. Harvitt  
Commodity Futures Trading Commission  
233 South Wacker Drive  
Room 4600  
Chicago, Illinois 60606

Representing Applicant

Boraks and Leckar  
2000 L Street, N.W.  
Suite 200

Washington, D.C. 20036

Representing Respondent

Frank H. McGhee and Andrew McGhee given leave to intervene. Applicant, C.F.T.C., to file answer to motions to vacate or modify order of June 9, 1982 by July 12, 1982, and respondents to reply by July 19, 1982.

UNITED STATES DISTRICT COURT FOR  
THE NORTH DISTRICT OF ILLINOIS

Docket No. 83 CR 262-1  
UNITED STATES OF AMERICA

v.

FRANK MCGHEE

JUDGMENT AND PROBATION COMMITMENT ORDER

In the presence of the attorney for the government the defendant appeared in person on this date, 10-7-83.

X With Counsel, Edward Genson  
PLEA X GUILTY, and the court being satisfied that there is a factual basis for the plea,

There being a finding of GUILTY.

Defendant has been convicted as charged of the offense(s) of knowingly, willfully and unlawfully embezzling customer funds which were received by CDCB to margin, guarantee and secure the trades and contracts of customers and accruing to such customers as the results of such trades and contracts IN VIOLATION OF TITLE 7, UNITED STATES CODE, SECTION 13(a) as charged in Counts 25, 26, and 27.

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, he court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of THREE (3) YEARS on count 25.

IT IS ADJUDGED that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of FIVE (5) YEARS on each of counts 26 and 27 to run concurrently with each other and consecutively to count 25. The execution of said sentence of imprisonment on counts

26 and 27 is hereby suspended and defendant placed on probation for a period of FIVE (5) YEARS on condition that he comply with the general conditions of probation and the following special condition: 1) defendant shall use his best efforts to make restitution to the customers of the Chicago Discount Commodities Brokers, Inc.

IT IS FURTHER ORDERED that the defendant report to the designated institution by November 21, 1983.

IT IS FURTHER ORDERED on government's oral motion, remaining counts are hereby dismissed. Same bond to stand pending surrender.

Condition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

The court orders commitment to the custody of the Attorney General and recommend.

/s/ John A. Nordberg

JOHN A. NORDBERG

OCTOBER 7, 1983



**Supreme Court of the United States**

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No. 84-261

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COMMODITY FUTURES TRADING COMMISSION, PETITIONER

*v.*

GARY WEINTRAUB, ET AL.

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ORDER ALLOWING CERTIORARI. Filed October 29,  
1984.

The petition herein for a writ of certiorari to the United  
States Court of Appeals for the Seventh Circuit is granted.